

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 499
101ST GENERAL ASSEMBLY

1181H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 590.500, RSMo, and to enact in lieu thereof two new sections relating to law enforcement officer disciplinary actions, with a delayed effective date for a certain section.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 590.500, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 590.500 and 590.1265, to read as follows:

590.500. 1. ~~[Any law enforcement officer, other than an elected sheriff or deputy, who possesses the duty and power of arrest for violations of the criminal laws of this state or for violations of ordinances of counties or municipalities of this state, who is regularly employed for more than thirty hours per week, and who is employed by a law enforcement agency of this state or political subdivision of this state which employs more than fifteen law enforcement officers, shall be given upon written request a meeting within forty-eight hours of a dismissal, disciplinary demotion or suspension that results in a reduction or withholding of salary or compensatory time. The meeting shall be held before any individual or board as designated by the governing body. At any such meeting, the employing law enforcement agency shall at a minimum provide a brief statement, which may be oral, of the reason of the discharge, disciplinary demotion or suspension, and permit the law enforcement officer the opportunity to respond. The results from such meeting shall be reduced to writing.]~~ **The provisions of this section shall be known and may be cited as the "Law Enforcement Officers' Bill of Rights"**. Any law enforcement agency that has substantially similar or greater procedures shall be deemed to be in compliance with this section. ~~[This section shall not apply to an officer serving in a probationary period or to the highest ranking officer of any law enforcement agency.]~~

2. For purposes of this section, the following terms mean:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (1) "Board", any individual or body authorized by an agency or department to
19 hear and make final decisions regarding appeals of disciplinary actions issued by an
20 agency or department;

21 (2) "Color of law", any act by a law enforcement officer, whether on duty or off
22 duty, that is performed in furtherance of his or her sworn duty to enforce laws and to
23 protect and serve the public;

24 (3) "Economic loss", any economic loss including, but not limited to, loss of
25 overtime accrual, overtime income, sick time accrual, sick time, secondary employment
26 income, holiday pay, and vacation pay;

27 (4) "Good cause", sufficient evidence or facts that would support a party's request
28 for extensions of time or any other requests seeking accommodations outside the scope of
29 the rules set out in this section;

30 (5) "Law enforcement officer", any sworn peace officer with the power to arrest
31 for a violation of the criminal code who is employed by any unit of the state or any county,
32 charter county, city, charter city, municipality, district, college, university, or any other
33 political subdivision or is employed by the board of police commissioners as defined in
34 chapter 84. "Law enforcement officer" shall not include any officer who is the highest
35 ranking officer in the law enforcement agency;

36 (6) "Record", any transcription or audio or video recording of all interviews or
37 hearings and complete documentary file.

38 3. Whenever a law enforcement officer is under investigation or is subjected to
39 questioning that the officer reasonably believes could lead to disciplinary action, demotion,
40 dismissal, transfer, or placement on a status that could lead to economic loss, the
41 investigation or questioning shall be conducted under the following conditions:

42 (1) The law enforcement officer who is the subject of the investigation shall be
43 informed, in writing, of the existence and nature of the alleged violation and the individuals
44 who will be conducting the investigation. Notice shall be provided to the officer along with
45 a copy of the complaint at least twenty-four hours prior to any interrogation or interview
46 of the officer;

47 (2) Any person, including members of the same agency or department as the officer
48 under investigation, filing a complaint against a law enforcement officer shall have the
49 complaint supported by a written statement outlining the complaint that includes the
50 personal identifying information of the person filing the complaint. All personal
51 identifying information shall be held confidential by the investigating agency;

52 (3) When a law enforcement officer is questioned or interviewed regarding matters
53 pertaining to his or her law enforcement duties or actions taken within the scope of his or

54 her employment, such questioning shall be conducted for a reasonable length of time and
55 only while the officer is on duty unless exigent circumstances exist that necessitate
56 questioning the officer while he or she is off duty;

57 (4) Any interviews or questioning shall be conducted at a secure location at the
58 agency that is conducting the investigation or at the place where the officer reports to
59 work, unless the officer consents to another location;

60 (5) Law enforcement officers may be questioned by up to two investigators and
61 shall be informed of the name, rank, and command of the officer or officers conducting the
62 investigation; except that, separate investigators shall be assigned to investigate alleged
63 department policy violations and alleged criminal violations;

64 (6) Interview sessions shall be for a reasonable period of time. There shall be times
65 provided for the officer to allow for such personal necessities and rest periods as are
66 reasonably necessary;

67 (7) Prior to an interview session, the investigator or investigators conducting the
68 investigation shall advise the law enforcement officer of the rule set out in *Garrity v. New*
69 *Jersey*, 385 U.S. 493 (1967), specifically that the law enforcement officer is being ordered
70 to answer questions under threat of disciplinary action and that the officer's answers to the
71 questions will not be used against the officer in criminal proceedings;

72 (8) Law enforcement officers shall not be threatened, harassed, or promised
73 rewards to induce them into answering any question; except that, law enforcement officers
74 may be compelled by their employer to give protected *Garrity* statements to an investigator
75 under the direct control of the employer, but such compelled statements shall not be used
76 or derivatively used against the officer in any aspect of a criminal case brought against the
77 officer;

78 (9) Law enforcement officers under investigation are entitled to have an attorney
79 or any duly authorized representative present during any questioning that the law
80 enforcement officer reasonably believes may result in disciplinary action. The questioning
81 shall be suspended for a period of up to twenty-four hours if the officer requests
82 representation;

83 (10) Prior to the law enforcement officer being interviewed, the officer and his or
84 her representative shall have the opportunity to review the complaint;

85 (11) Law enforcement officers or their designated representative shall have the
86 right to bring their own recording device and may record all aspects of the interview;

87 (12) The law enforcement agency conducting the investigation shall have ninety
88 days from receipt of a citizen complaint or from the date the agency became aware of the
89 alleged conduct upon which the allegation rests to complete the investigation. The date

90 shall be stated on the document providing notice to the law enforcement officer. The
91 agency shall determine the disposition of the complaint and render a disciplinary decision,
92 if any, within ninety days. The agency may, for good cause, petition the board overseeing
93 the administration of discipline for an extension of time to complete the investigation.
94 Absent consent from the officer being investigated, the board overseeing the administration
95 of discipline shall set the petition for extension for hearing and provide notice of the
96 hearing to the law enforcement officer under investigation. The officer shall have the right
97 to attend the hearing and to present evidence and arguments against extension. If the
98 board finds the agency has shown good cause for the granting of an extension of time to
99 complete the investigation, the board shall grant an extension of up to sixty days. The
100 agency shall be limited to two extensions per investigation; except that, if there is an
101 ongoing criminal investigation, there shall be no limitation on the amount of sixty-day
102 extensions;

103 (13) Within five days of the conclusion of the administrative investigation, the
104 investigator shall inform the officer in writing of the investigative findings and any
105 recommendation for further action, including discipline;

106 (14) A complete record of the administrative investigation shall be kept by the law
107 enforcement agency conducting such investigation. Upon completion of the investigation,
108 a copy of the entire record including, but not limited to, audio, video, or transcribed
109 statements, shall be provided to the officer or the officer's representative within five
110 business days of the officer's written request. The agency may request a protective order
111 to redact all personal identifying witness information;

112 (15) Law enforcement officers shall have the right to compensation for any
113 economic loss incurred during an investigation if the alleged misconduct is not sustained
114 by the agency conducting the investigation; and

115 (16) All records compiled as a result of any investigation subject to the provisions
116 of this section shall be held confidential and shall not be subject to disclosure under
117 chapter 610 except by court order.

118 4. Law enforcement officers who are suspended without pay, demoted, terminated,
119 transferred, or placed on a status resulting in economic loss shall be entitled to a full due
120 process hearing. The proceeding shall constitute a contested case under chapter 536. The
121 components of the hearing shall include, at a minimum:

122 (1) The right of the law enforcement officer to be represented by an attorney or
123 other individual of his or her choice during the hearing;

124 (2) The right of the law enforcement officer or his or her attorney to conduct
125 discovery prior to the hearing. Depositions may be taken in the same manner and under

126 the same conditions as provided for in the Missouri civil rules of civil procedure for civil
127 cases in the circuit court. Subpoenas may be issued by the board conducting the hearing
128 or by the circuit court or the office of the clerk for the county where the agency has its
129 principal place of business;

130 (3) Seven days' notice of the hearing date and time;

131 (4) An opportunity for the law enforcement officer or his or her attorney to access
132 and review the investigatory record at least seven days prior to the hearing;

133 (5) The right of the law enforcement officer or his or her attorney to present
134 witnesses and evidence in the officer's defense and a right to cross-examine any adverse
135 witnesses against the officer;

136 (6) The right of the law enforcement officer to refuse to testify at the hearing if the
137 officer is concurrently facing criminal charges in connection with the same incident. A law
138 enforcement officer's decision not to testify shall not result in additional internal charges
139 or discipline;

140 (7) A complete record of the hearing to be kept by the agency for purposes of
141 appeal. The record shall be provided to the law enforcement officer or his or her attorney
142 upon written request; and

143 (8) The entire record of the hearing to remain confidential and shall not be subject
144 to disclosure under chapter 610 except by lawful subpoena or court order.

145 5. Any decision, order, or action taken following the hearing shall be in writing and
146 shall be accompanied by findings of fact. The findings shall consist of a concise statement
147 upon each issue in the case. A copy of the decision or order accompanying the findings and
148 conclusions along with the written action and right of appeal, if any, shall be delivered or
149 mailed promptly to the law enforcement officer or to the officer's attorney or
150 representative of record.

151 6. Law enforcement officers shall have the opportunity to provide a written
152 response to any adverse materials placed in their personnel file, and such written response
153 shall be permanently attached to the adverse material.

154 7. Law enforcement officers shall have the right to compensation for any economic
155 loss incurred as a result of disciplinary action by an agency if the alleged misconduct is not
156 sustained by the administrative body hearing the disciplinary appeal.

157 8. Law enforcement officers may petition the circuit court in the county in which
158 the law enforcement agency has its principal place of business to review the decision of the
159 administrative body hearing the appeal of discipline. Upon a finding that the discipline
160 was not justified, the circuit court may award the law enforcement officer back pay and
161 costs incurred in bringing the suit, including attorney's fees.

162 **9. Employers shall defend and indemnify law enforcement officers from and**
163 **against civil claims made against them in their official and individual capacities if the**
164 **alleged conduct arose in the course and scope of their obligations and duties as law**
165 **enforcement officers. This includes any actions taken while off duty if such actions were**
166 **taken under color of law. In the event a law enforcement officer is convicted of or pleads**
167 **guilty to criminal charges arising out of the same conduct, the employer shall no longer be**
168 **obligated to defend and indemnify the officer in connection with related civil claims.**

169 **10. No law enforcement officer shall be disciplined, demoted, dismissed,**
170 **transferred, or placed on a status resulting in economic loss as a result of the officer's**
171 **assertion of his or her constitutional rights in any judicial proceeding unless the officer**
172 **admits to wrongdoing, in which case the provisions of this section shall not apply.**

173 **11. No state or local governmental unit including, but not limited to, a county,**
174 **charter county, city, charter city, municipality, district, college, university, or any other**
175 **political subdivision that employs a law enforcement officer shall enact, promulgate,**
176 **enforce, or follow any law, regulation, or policy that would abolish, conflict with, modify,**
177 **or in any way diminish any right or remedy provided to law enforcement officers under**
178 **this section.**

179 **12. The rights set out in this section are minimum standards to be applied**
180 **throughout the state. However, nothing in this section shall prohibit a law enforcement**
181 **agency and the authorized bargaining representative for a law enforcement officer**
182 **employed by that agency from reaching written agreements providing disciplinary**
183 **procedures more favorable than those provided in this section.**

184 **13. The remedies provided by this section against law enforcement agencies or**
185 **governmental bodies shall be in addition to those provided by any other provision of law.**
186 **Any aggrieved law enforcement officer or authorized representative may seek judicial**
187 **enforcement of the requirements of these sections. Suits to enforce these sections shall be**
188 **brought in the circuit court for the county in which the law enforcement agency or**
189 **governmental body has its principal place of business.**

190 **14. Upon a finding by a preponderance of the evidence that a law enforcement**
191 **agency, governmental body, or member of such an entity has violated any provision of this**
192 **section, a court shall void any action taken under this section. Suit for enforcement shall**
193 **be brought within one year from the time a violation is ascertainable.**

590.1265. 1. The provisions of this section shall be known and may be cited as the
2 **"Police Use of Force Transparency Act of 2021".**

3 **2. For purposes of this section, the following terms mean:**

4 **(1) "Law enforcement agency", the same meaning as defined in section 590.1040;**

- 5 **(2) "Peace officer", the same meaning as defined in section 590.010;**
- 6 **(3) "Use-of-force incident", an incident in which:**
 - 7 **(a) A fatality occurs that is connected to a use of force by a peace officer;**
 - 8 **(b) Serious bodily injury occurs that is connected to a use of force by a peace**
9 **officer; or**
 - 10 **(c) In the absence of death or serious bodily injury, a peace officer discharges a**
11 **firearm at, or in the direction of, a person.**
- 12 **3. Each law enforcement agency shall, at least annually, collect and report local**
13 **data on use-of-force incidents involving peace officers to the National Use of Force Data**
14 **Collection through the Law Enforcement Enterprise Portal administered by the Federal**
15 **Bureau of Investigation.**
- 16 **4. Each law enforcement agency shall additionally report the data submitted under**
17 **subsection 3 of this section to the department of public safety. Law enforcement agencies**
18 **shall not include personally identifying information of individual peace officers in their**
19 **reports.**
- 20 **5. The department of public safety shall, no later than June 30, 2022, develop**
21 **standards and procedures governing the collection and reporting of use-of-force data**
22 **under this section. The standards and procedures shall be consistent with the**
23 **requirements, definitions, and methods of the National Use of Force Data Collection**
24 **administered by the Federal Bureau of Investigation.**
- 25 **6. The department of public safety shall publish the data reported by law**
26 **enforcement agencies under subsection 4 of this section, including statewide aggregate data**
27 **and agency-specific data, in a publicly available report. Such data shall be deemed a**
28 **public record consistent with the provisions and exemptions contained in chapter 610.**
- 29 **7. The department of public safety shall undertake an analysis of any trends and**
30 **disparities in rates of use of force by all law enforcement agencies, with a report to be**
31 **released to the public no later than January 1, 2025. The report shall be updated**
32 **periodically thereafter, but not less than once every five years.**

Section B. Section 590.1265 of section A of this act shall become effective on January 2 1, 2022.

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